

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 3:04cr0030(1) AS
)	
ROBERT SMITH)	
*****)	
ROBERT SMITH,)	
)	
Petitioner)	
)	
v.)	Civil No. 3:05cv0295 AS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent)	

MEMORANDUM OPINION AND ORDER

This Court takes full judicial notice of the record in this case including the imposition of sentence which was for 70 months imprisonment followed by four years supervised release with a special assessment fee imposed. Before the court is a motion to vacate under 28 U.S.C. §2255 filed pro se by the defendant-petitioner, Robert Smith.

It is to be noted that the sentencing in this case occurred on October 21, 2004 before the Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738 (2005). The proceedings on the plea were under oath and indeed there was a waiver of the right to file petitions under 28 U.S.C. §2255 which was quite specific. *McReynolds v. United States*, 397 F.3d 479 (7th Cir. 2005) expressly provides that the Supreme Court's *Booker* decision was not retroactive. Most recently, the Court of Appeals has held as enforceable the knowingly

and voluntarily entered waiver with reference to §2255. *See United States v. Gibson*, 356 F.3d 761 (7th Cir. 2004). This pro se petitioner-defendant has not here claimed ineffective assistance of counsel in negotiating the plea agreement.

After careful consideration, and understanding the status of pro se litigants in the federal courts under *Haines v. Kerner*, 404 U.S. 519 (1972), this court is constrained to **DENY** this pro se petition for relief under 28 U.S.C. §2255, and such is now **ORDERED**.

DATED: July 5, 2005

s/ ALLEN SHARP
ALLEN SHARP, JUDGE
UNITED STATES DISTRICT COURT